

MINUTES

ALCOHOL AND TOBACCO COMMISSION

JANUARY 17, 2006

CALL TO ORDER/NOTING OF QUORUM

Chairman Heath called the meeting to order and noted the quorum and the attendance. Present were Vice Chairperson Brizzi, Commissioner Sturtz and Commissioner Guthrie. Also in attendance was Superintendent Huskey.

Lisa Goldner of Bose McKinney and Evans, Brad Klopfenstein of ILBA, Jeff McKean, Dennis and Lisa Day and Deb Scott were present as observers.

DISPOSITION OF MINUTES

Vice Chairperson Brizzi moved to approve the minutes submitted for the January 3, 2006 meeting. Motion seconded by Commissioner Sturtz and it was unanimously approved.

HEARING JUDGE'S RECOMMENDATIONS

PARTIES AGREED DISPOSITION (PAD) FORMS – Vice Chairperson Brizzi moved to approve the PAD forms submitted for the January 17, 2006 meeting. Motion seconded by Commissioner Sturtz and it was unanimously approved.

CONSIDERATION OF APPLICATIONS

I incorporate by reference these lists of permits for renewal, which have been recommended by local boards and reviewed by said staff with the authority of the Commission, and hereby move for approval of same and the inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Sturtz and it was unanimously approved.

I incorporate by reference these lists of permit applications for a new permit or application for changes in location or ownership or both of existing permits, which have been recommended by local boards and reviewed by at least two Commissioners and hereby move for approval of same and inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Sturtz and it was unanimously approved.

I incorporate by reference these lists of permit applications for catering and hereby move for approval of same and the inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Sturtz and it was unanimously approved.

I incorporate by reference these lists of permits to be placed in escrow for not more than one year, which have been reviewed and recommended by a

Commissioner as appropriate for first or second year escrow and hereby move for approval of same and the inclusion of these lists as part of the minutes by exhibit. Motion seconded by Commissioner Sturtz and it was unanimously approved.

Four hundred thirty-six (436) renewals approved, sixty-nine (69) new and/or transfer permits approved, one (1) permit approved for catering, five (5) permits approved for first year escrow, eight (8) permits approved for second year escrow, one (1) permit approved for third year escrow, seven (7) permits approved for fourth year escrow and two (2) permits approved for fifth year escrow.

RENEWAL LETTERS AND WAIVER OF FEES

Vice Chairperson Brizzi moved to approve the renewal letters and the waiver of fees for letters of extension for the preceding weeks. Motion seconded by Commissioner Sturtz and it was unanimously approved.

APPLICATIONS FOR DISCUSSION

RR53-21719 HOOD CORPORATION, D/B/A JOHNNY JOE RESTAURANT AND PUB – Chairman Heath noted this is a new type 209 application with the local board voting three (3) to zero (0) to approve.

Vice Chairperson Brizzi moved to uphold the local board's recommendation and approve the new permit. Motion seconded by Commissioner Sturtz and it was unanimously approved.

RR84-22178 RIVER BILLS, INC. –Chairman Heath noted this applicant is requesting commission approval to file this application, due to a system error on the Commission's part.

Vice Chairperson Brizzi moved to allow this filing. Motion seconded by Commissioner Sturtz and it was unanimously approved.

RR02-97053 T-III, LLC – Chairman Heath noted the location of this type 209 permit was annexed into the city limits of Fort Wayne. The permittee is requesting that this permit be converted to a type 210 permit.

Vice Chairperson Brizzi moved to approve this request. Motion seconded by Commissioner Sturtz and it was unanimously approved.

DL54-22030 MAC'S CONVENIENCE STORES LLC, D/B/A CIRCLE K – Chairman Heath noted this is a new type 115 application with the local board voting two (2) to one (1) to disapprove.

Vice Chairperson Brizzi moved to uphold the local board's recommendation and deny this new permit. Motion seconded by Commissioner Sturtz and it was unanimously approved.

RR46-18480 SHERIDAN BEACH REALTY GROUP, LLC, INC. – Chairman Heath noted this is a type 112 renewal application with the local board voting four (4) to zero (0) to disapprove.

Vice Chairperson Brizzi moved to uphold the local board's recommendation and deny the renewal. Motion seconded by Commissioner Sturtz and it was unanimously approved.

INACTIVE FILES

Vice Chairperson Brizzi moved to make thirty-seven (37) permits inactive. Ten (10) permits are subject to auction and twenty-seven (27) permits are not subject to auction. Motion seconded by Commissioner Sturtz and it was unanimously approved.

APPEALS FROM LOCAL BOARD RECOMMENDATIONS

No Appeals From Local Board Recommendations

OLD BUSINESS

No Old Business

NEW BUSINESS

BP CONNECT – MARION COUNTY –

Jeff McKean – At the risk of extending one of these meetings, I will try to be as brief as possible. I appreciate the opportunity to speak to you today. I have been practicing before the Commission for approximately 15 years and I don't believe I've ever requested the opportunity to talk like this. I spoke to Chairman Heath earlier today. I represent BP Connect concerning its alcoholic beverage permit licenses in Indiana. BP operates about 15 grocery store permits in the state. Today, I appeared before the Marion County Local Board. I'd been on previous occasions and we actually had a hearing that lasted about four hours back in December. This morning, the board was to issue its decision and it did that. The decision was against my client. There were four applications pending and they are recommending to the Commission that those applications be denied. I've sent a letter to Chairman Heath and asked the Commission look at that decision, look at the evidence and determine what should be done. That's not the issue, obviously, before you today because you don't have the evidence that was presented. And, again, there was approximately a four-hour hearing with lots of exhibits. What's troubling to me and troubling to my client is in 2002, at great expense, this same client, BP Connect, hired me to take an appeal from Johnson County to determine whether or not

these same exact prototype stores met the definition of a grocery store. And, we all know that's a controversial issue. But, in 2002, a prior Commission said, "yes, this exact prototype store is a grocery store." In 2004, there was another application coming out of Marion County with a similar issue. Again, there was a lengthy appeal that occurred from that. Findings of Fact and Conclusions of Law were issued. We had a hearing that lasted, probably half the day. Remonstrators were present. All the evidence was put on. And, again, this Commission, I believe the order was signed by three of the four commissioners here today, said, "Yes, this exact prototype meets the definition of a grocery store." We presented the same issues to the Marion County Local Board. And all through the proceedings, my client is looking at me and asking, "why are we here again? We've done this. We've decided these issues. Why do we keep coming back on the same precise issue? And my request to the Commission today would be that as you look at this application and look at similar applications, if the Commission might consider whether or not to issue a directive, or possibly multiple directives to local boards with instructions on how they should treat Commission decisions and whether certain respect or precedent should be given to decisions of the Commission that are again precise and exactly on point. I think companies that are coming to Indiana trying to do business here deserve that courtesy. We ask the Commission to consider that. Obviously, the grocery store issue is a difficult one. We all know there is legislation pending in the legislature. That can be hashed out there. That's the appropriate place to determine it. Maybe the law will change. If it does, my clients will abide by it. We would just ask that due respect be given to prior decisions of the Commission by the local boards.

Chairman - Anybody have any questions?

Comm. Sturtz - Have you read house bill (inaudible)?

McKean - I certainly have. Well aware of it. Thanks for the opportunity.

Chairman - Thanks, Jeff.

POLICY DETERMINATIONS

No Policy Determinations

UNDER ADVISEMENT

Nothing Under Advisement

ANNOUNCEMENTS

No announcements

ADJOURNMENT

Commissioner Sturtz moved to adjourn the meeting. Motion seconded by Commissioner Guthrie and it was unanimously approved.

Approved this _____ day of _____, 2006.

DAVE HEATH, CHAIRMAN

MELANIE BRIZZI, VICE CHAIRPERSON

DALE STURTZ, COMMISSIONER

FRANK GUTHRIE, COMMISSIONER